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CORPORATE CRIMINAL LIABILITY IN UNFAIR BUSINESS COMPETITION BASED ON *CORPORATE CULTURE MODEL*

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ABSTRACT

A healthy economic condition is the key to the country's economic stability and prosperity. Businesses play a very important role in the country's economic growth, such as job creation and growth, and they play an active role in the country's growth. However, the important and active role of companies in the country's economic growth is often associated with violations that end up in criminal law. Unfair business competition creates monopoly.

For economists, a monopoly is defined as a market structure with only one producer or seller. The concept of community monopoly is that there are producers or sellers who have a monopoly position, if the producer or seller can control the market for the goods or services sold. It is necessary to ask how the criminal responsibility of business actors against perpetrators of fraud in business competition is regulated in the provisions of the law, and the criminal responsibility of business actors based on a business model. people and well-being?

Legal research methods are used to answer this question. In conclusion, it is hindered by the ambiguity of the laws and regulations regarding the criminal liability of entrepreneurs before the perpetrators of business competition fraud. The objective of the Prohibition of Monopolistic Behavior and Trade Competition Number 5 of 1999 is to optimize the elimination of unfair trade competition violations. However, criminal liability based on the corporate culture model must be applied with caution, as it affects corporate stability and social welfare.

INTRODUCTION

Background

In an effort to deal with business competition, companies are faced with the latest technological inventions, various techniques in marketing and efforts to expand and control the market. This situation may lead businesses to take action to track down competitors, counterfeiting, vandalism, theft, bribery, and price or trade zone conspiracies. In short, by encouraging competition, businesses can and often do commit crimes to achieve their goals. Unfair trade competition will certainly lead to the impact of unfair competition among business actors, which can cause losses to consumers and hamper

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economic growth. Healthy business competition must be based on product or service quality, innovation, efficiency and competitive pricing. Here are some examples of monopolistic behavior in business:

• High Pricing: Companies that dominate the market can set high prices for services or products offered to competitors, the competition cannot compete on price.

• Apply for patents or exclusive licenses: companies may apply for patents or exclusive licenses for certain products or services so that competitors cannot manufacture or sell such similar products or services.

• Restriction of production or distribution: A company may restrict the production or distribution of certain products or services, preventing competitors from entering the market.

• Discriminatory Practices: A company may engage in discriminatory practices against its competitors, such as offering lower prices to certain customers or restricting access to distribution channels.

Commercial activities have the potential for competition between commercial entities. Commercial agents will strive to create, package and market their products and services in the best possible way so that consumers care and buy. In terms of profit, competing in the business world is an effective way to optimize the use of resources. The existence of competition will tend to reduce production costs so that prices fall and quality increases.

Article 1 paragraph (5) of Law Number 5 Year 1999 reads: that a business entity is any form of company including business partnerships, private companies, cooperatives, public companies, regional businesses and other forms of companies doing business in Indonesia. Based on this law, business entities that are considered legal subjects can commit monopolistic practices or unfair business competition and can be subject to criminal sanctions if they violate the provisions of the law.

Healthy business competition can encourage innovation, improve the quality of products or services, and benefit consumers. Therefore, fair trade competition is essential to create an efficient and fair market. Article 33 of the 1945 Constitution establishes the principle of a national economy based on the principle of kinship, which states that the earth, water resources and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people. In the context of unfair trade competition, the implication is that the state has an important role in supervising and regulating trade competition so as not to harm the interests of the people and against the interests of the people. The state is also obliged to fight for the interests of the people in the management of natural resources and national wealth in order to provide optimal benefits for the prosperity of the people. Economic freedom is guaranteed by competition law, especially the right to freedom to compete, but competition law has other objectives, including to prevent the abuse of economic power, including ensuring fair competition, in the sense that parties with economic power do not harm other competing business entities. Corporate crime has long been an issue in the development of criminal law, which is reflected in the existence of various theories of corporate criminal liability aimed at preventing or punishing companies from committing crimes or offenses. Basically, an offense (criminal) can be determined by the fact of harm (injury), which then gives rise to criminal liability. Similar to the concept of crime, corporate criminal liability also arises basically because of the company's criminal act and the act causes harm to others. It is not surprising that the concept of corporate criminal liability has become a subject of conversation and discussion among legal scholars, not only domestically, but also abroad. To address this issue, many countries have adopted policies aimed at punishing corporations, not just individuals. According to its qualifications, corporate crime is classified as white-collar crime with the

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use of a very sophisticated modus operandi and can be transnational in scale, conducted across countries and regions. The combination of these two qualities leads to a wide range of crimes and has a major impact on casualties. It is said that because the victims of corporate crime include the wider community, consumers who use the products they produce, companies that act as competitors and employees or unprotected workers. For the country itself, this has a very significant impact, both economically and financially.

Conversely, even though the company is a legal entity or business entity that contributes significantly to economic growth and national development, it is not uncommon for the company to commit various criminal acts (business crimes) that cause state and social losses. Indeed, it is not uncommon for corporations to be used as deposits of criminal assets without being affected by the legal process of criminal liability.

METHODS OF INVESTIGATION

This research uses a normative juridical approach method, which is a legal research method carried out by examining library materials or secondary data where from the data the concept of "information and knowledge will emerge.

DISCUSSION

Corporate Criminal Liability in Unfair Business Competition

Indonesia has Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition, this regulation is a positive law that regulates criminal sanctions for companies that violate business management, such as fines and revocation of business licenses. Monopolistic practices can occur when one or more companies control the market and prevent competitors from entering the market. This can be done in various ways, including by imposing high prices, limiting production or distribution, or conducting activities that discriminate against competitors. Monopolistic practices can harm consumers because the price of goods or products offered is more expensive and the quality is not maximized. Therefore, such unfair business competition is prohibited by positive law and must be supervised by the competent authority.

Commercial activities that take place will inevitably result in competition between commercial entities. Commercial agents will strive to create, package and market their products and services as well as possible so that consumers care and buy. In terms of profit, competing in the business world is a very effective way to optimize the use of resources. The existence of competition will tend to reduce production costs so that prices fall and quality increases.

Legal guarantees based on the prohibition of monopoly law will be able to avoid monopolistic practices and unfair business competition, create efficiency and effectiveness of business activities so as to improve business performance, improve the national economy and maximize the achievement of people's welfare. Prosperity. Antitrust law in Indonesia is regulated by Law No. 5 of 1999 on the prohibition of monopolistic practices and unfair business competition. In relation to antitrust, this is reflected in Article 3 which states that "business entities in Indonesia in carrying out their business activities are based on economic democracy which pays attention to the balance between the interests of business entities and the public interest".

Criminal corporate liability is very urgent, this condition can be observed from the many violations that can be committed by companies, especially in the form of unfair business competition, where regulation in the form of positive law and strict regulation of various corporate violations will activate a steady regulation in order to ensure legal certainty if a company commits criminal acts.

So far, efforts to deal with corporate offenses have only used the tools of civil law and state administrative law, which in practice are considered inadequate. Overcoming

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corporate crime through criminal law is considered urgent. According to the hypothesis, if the principle of complementarity is not ignored, then criminal law can be applied to deal with corporate offenders.

Business crime cases can be prosecuted under criminal law, since the enactment of the Emergency Law on Economic Crimes No. 7 of 1995, but the implementation of the use of criminal law in corporate torture has never been used. Another legal obstacle is the difficulty of holding companies accountable, mainly because the current antitrust law does not regulate commercial competition clearly and precisely. The provisions of the antitrust law are still vague so that this legal vacuum is exploited by unscrupulous entrepreneurs, for example in the cellular telecommunications industry shows that the applicable antitrust law does not regulate business competition clearly, definitively and precisely. There is an urgent need to change the antitrust law, where the changes must be based on the will of the Indonesian people, the interests of the community are more concerned than just the interests of business entities.

Sri Redjeki Hartono stated that economic activities that take place in society require the intervention and participation of the state, because the main purpose of economic activity is to generate profits. This goal can lead to irregularities, even various frauds that can ultimately harm some or all parties. He pointed out that the intervention and participation of the state in economic activities in general within the framework of legal relations is still within the limits of the balance between the common interests of the parties. State intervention here aims to balance the interests of all levels of society, protect the interests of producers and consumers, and at the same time protect the interests of the state and the wider community with public interests, business interests and individuals.

Increasing the standard of living of a just and prosperous society is the goal of economic development in Indonesia, therefore, business entities in Indonesia in carrying out their business activities must be based on economic democracy guided by Article 33 of the 1945 Constitution.

The purpose of the Law on the Prohibition of Monopolistic Practices and Unfair Business Competition is to encourage healthy and fair business competition in Indonesia. This law aims to protect consumers from harmful monopolistic practices. It also aims to encourage a conducive investment climate and support sustainable economic growth. With this law, it is expected that companies in Indonesia can compete in a healthy and fair manner, so as to improve and maximize the quality of goods and services offered and provide benefits to society as a whole.

The imposition of criminal sanctions in this regulation is to prevent monopolistic practices and unfair business competition that harm consumers and competitors. It is expected that with criminal sanctions, companies will be more careful in conducting their business activities and not practicing monopoly or unfair business competition. In addition, criminal sanctions will provide a deterrent effect to violating companies, thereby reducing the occurrence of violations in the future. Thus, the imposition of criminal sanctions for perpetrators of unfair business competition can help create a healthy and fair business environment for all parties involved.

The people who are directly harmed by the criminal acts of corporations (corporations) or others are of course greatly harmed by the impact caused by the criminal acts of the corporation. Likewise, the State whose obligation to provide welfare for every citizen will suffer, both in the economic field and state finances. Law Number 5 Year 1999 on the Prohibition of Monopolistic Practices and Unfair Business Competition provides guidelines on the imposition of sanctions for those who commit acts of monopoly and unfair trade competition in the form of companies, legal entities, associations and other

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organizations or foundations. which is equal to one third of the fine, if the person committing the criminal act is an individual.

Company closure is one of the punitive measures that is a very effective measure in eradicating corporate crimes in the field of monopoly and unfair business competition. Sanctions in this Law include elements of external control and public access for some companies. Public control and perception of the company has a much greater impact than criminal penalties. Both contain aspects of punitive and non-punitive means, i.e. controlling and imposing shame. A company that is condemned to partial or complete closure will be deeply embarrassed because by such action the company is already perceived as having a bad reputation and ultimately the public. These surveillance measures will shame monopolists and other commercial competitors for unfairly engaging in such practices.

Corporate Criminal Liability based on *Corporate Culture Model* and its Implication for Public Welfare

Corporate culture is how a company interacts with its employees. These interactions include communication, conveying aspirations, empowering employees and much more. Of course, this is no small feat, a company's corporate culture also makes a significant contribution to the growth of work quality. It can even affect employee performance by up to 30%. Unfortunately, there are still many companies that are not aware of corporate culture. Corporate culture is a reference that is used as one of the determinants of company velue, because if a company operates with a bad corporate culture, its image will not be good in the eyes of the public. The impact is then felt on brand and customer loyalty, and will even have an impact on the number and quality of employees who work.

The biggest problem currently hampering the criminal prosecution of companies is the problem of proving the company's guilt. The issue of proof plays an important role in the trial process, so the extent to which the prosecutor must prove and what things must be observed by the judge to be able to conclude the company's guilt in the process of proof. the judge's confidence. decide to resolve the case at hand.

Laode M. Syarief said that it is not judges or court institutions that should be responsible for limiting and hampering criminal prosecution of companies that commit corruption crimes, but rather investigators (especially the Corruption Eradication Commission) who are still unsure whether companies should become defendants in corruption trials. It is recognized that the difficulty of applying the elements of crimes committed by the community is because law enforcement officials are still fixated on the principle of no-fault crime tada. Criminal Law. These obstacles include:

- First, determining the existence of corporate crime cannot be viewed from the conventional side like other crimes, because corporate crime is often part of white-collar crime.
- Second, determining the subject of criminal liability for the company's misconduct.
- Third, determining corporate crime (schuld, mens rea) is not easy, because in organized crime there is a very complicated relationship between the association on the one hand, the board of directors, on the other hand, directors and managers as well as the parent company, the division of the company (part of the company) and its affiliates (subsidiaries).

The purpose of corporate culture is to maintain and create a good and harmonious relationship between the company and its employees. In addition, those who work in the company may have professional experience. The same applies to people working in the company. As a company/society. CoHive itself implements a similar corporate culture to create work that is synergistic, collaborative, and good for each other.

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There are basically several general theories and theories for assessing corporate criminal liability, the first is the theory of strict criminal liability based on strict liability law, in This is the legal liability of the company based on the law, whoever is responsible, because it has committed a criminal offense. offense. Second, the indirect liability theory emphasizes the responsibility of the company's management/society as an "agent" operating outside the company. Third, the deterministic theory (direct corporate liability) or direct criminal liability theory, where the company can proceed to commit a crime directly through a person close to the company's community and is treated as a separate company. Fourth, the synthesis theory holds that a company/legal entity can be criminally liable if committed by many people, and the criminal elements exist between one person and another and are interdependent on each other, not separate from each other. . Fifth, learn from corporate culture models or office culture models, especially the lessons learned from them, focusing on the policies offered by the company/corporation and not directly affecting the work habits of legal entities. A legal expert may be asked to give his or her legal opinion, if a person's actions are reasonable and justified because of what he or she has done because the legal entity authorizes or permits such actions.

The form of responsibility of the company management is the existence of obligations or duties related to the function, position and legal relationship between the company and the company management. These obligations and legal relationships are referred to as fiduciary duties, including but not limited to: (a). duty of care and diligence; (b). duty of capacity; (with). duty of care; (c). The business judgment rule is that the director's actions must be the product of reasonable investment and deliberation, and the director's decisions must represent a sound basis for the actor.

The importance of this fiduciary duty is to ensure the extent to which an entity can act within the limits of its authority so that the entity is not personally liable. In practice, it is not easy to prove whether fiduciary duties were properly performed, as the quality of each duty is determined by the companies involved and can vary. It is up to the judge to decide whether there was a breach of fiduciary duty. For this reason, another criterion is needed as a basis for the liability of company management for an act, namely the use of the Slavenburg criteria, through several questions, namely:

- The manager of the organization/company is an official who can prevent or stop criminal behavior (his/her position has or has authority/power).
- Managers understand that violations are likely.

In addition, the Slavenburg criteria also recognize a duty of care. Failure to comply with this duty of care can result in a person being found guilty of a crime. In environmental law, the duty of care could be that a hazard warning has been issued, but does not address the harm caused.

Fundamental issues related to their existence with the livelihood of workers and the economic sustainability of the community and various other consequences in the form of crises in other areas must be taken into account to punish companies based on the corporate culture model. In this context, Suzuki reminded that the imposition of criminal sanctions against business actors, such as partial or complete closure of the business, must be done with caution. This is because the risks of such decisions are far-reaching and the ones who bear the consequences are not only the guilty but also innocent parties such as workers. To prevent the negative effects of corporate sanctions, think about employee and shareholder insurance. Thus, the negative effects of sanctions on the company can be avoided.

Conclusion

The law, which is the current positive law, prohibits monopolistic behavior and unfair business competition to contribute to the optimization of national economic efficiency. Entrepreneurs in their business activities must be based on economic democracy which requires equal opportunities for all citizens to be able to participate in the production and marketing of goods and services in a healthy, efficient and productive business environment that encourages the achievement of economic growth to create a true market economy.

The form of corporate liability for unfair trade crimes is an action in administrative law enforcement efforts that can only be carried out by the Trade Competition Supervisory Commission (KPPU) and is not included in the criminal liability system.

Advice

1. It is necessary to reform the positive law related to Monopolistic Practices and Unfair Business Competition by emphasizing corporate liability as a criminal offense and not only limited to administrative and civil law enforcement.
2. Monopoly violations are adjudicated by general courts, not the KPPU, except for administrative and civil violations.

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